

No. 15890 ✓

United States
Court of Appeals
for the Ninth Circuit

N. GORDON PHILLIPS and LAURETTA M.
PHILLIPS, Petitioners,

vs.

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

Transcript of Record

Petition to Review a Decision of The Tax
Court of the United States

FILED

MAY 22 1958

PAUL P. O'BRIEN, CLERK

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[Clerk's Note: When deemed likely to be of an important nature, errors or doubtful matters appearing in the original certified record are printed literally in italic; and, likewise, cancelled matter appearing in the original certified record is printed and cancelled herein accordingly. When possible, an omission from the text is indicated by printing in italic the two words between which the omission seems to occur.]

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NAMES AND ADDRESSES OF ATTORNEYS

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APPEARANCES

For Petitioner:

SIDNEY R. REED,
A. L. BURFORD, JR.

For Respondent:

MARK TOWNSEND.

The Tax Court of the United States

Docket No. 58561

N. GORDON PHILLIPS, Petitioner,

vs.

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

DOCKET ENTRIES

1955

Jun. 21—Petition received and filed. Taxpayer notified. Fee paid.

Jun. 22—Copy of petition served on General Counsel.

Aug. 15—Answer filed by General Counsel.

Aug. 15—Request for hearing in Los Angeles, filed by General Counsel.

Aug. 17—Notice issued placing proceeding on Los Angeles calendar. Service of Answer and request made.

1957

Apr. 2—Hearing set June 3, 1957—Los Angeles, Calif.

May 7—Notice of change of beginning date to June 4, 1957, Los Angeles, Calif.

Jun. 5—Hearing had before Judge Mulroney on the merits. Oral motion of counsel for petitioner to consolidate for hearing, and opinion. No objection by respondent. Granted. Submitted. Stipulation of Facts filed. Briefs due July 22, 1957. Reply briefs due Aug. 21, 1957.

July 1—Transcript of Hearing—June 5, 1957 filed.

July 9—Joint motion for extension of time to Aug. 23, 1957 to file brief, filed. Granted 7/9/57. Served 7/10/57.

Aug. 19—Brief for Respondent filed. Served 8/26/57.

Aug. 26—Brief for Petitioner filed. Served 8/26/57.

Sep. 16—Reply Brief for Petitioner filed. Served 10/2/57.

Oct. 16—Opinion filed—Judge Mulroney—Decision will be entered for respondent. Served 10/16/57.

Oct. 16—Decision entered. Judge Mulroney. Served 10/18/57.

Oct. 28—Motion by petitioner for review by Full Court—Denied 11/1/57. Served 11/5/57.

1958

Jan. 9—Petition for Review by U. S. Court of Appeals, Ninth Circuit, filed by petitioner.

1958

Jan. 9—Affidavit of service by mail, filed.

Jan. 9—Designation of contents of record, with statement of service thereon, filed.

Jan. 16—Appearance of A. L. Burford, Jr., Esq. filed.

Jan. 24—Supplemental Designation of Contents of record on review with proof of service thereon, filed by respondent.

Feb. 6—Agreement to Supplemental designation filed.

The Tax Court of the United States

Docket No. 58562

LAURETTA M. PHILLIPS, Petitioner,

vs.

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

DOCKET ENTRIES

[Note: Docket Entries in Docket No. 58562 are the same as Docket No. 58561.]

[Title of Tax Court and Docket No. 58561.]

PETITION

The above-named petitioner hereby petitions for a redetermination of the deficiency set forth by the Commissioner of Internal Revenue in his notice of deficiency (Bureau symbols Ap:LA:AA-DRR 90-D)

dated April 15, 1955, and as a basis for his proceeding alleges as follows:

1. The petitioner is an individual whose address is 715 North Maple Drive, Beverly Hills, California. The return for the period here involved was filed with the Collector of Internal Revenue for the Sixth District of California.

2. The notice of deficiency (a copy of which is attached and marked Exhibit A) was mailed to the petitioner on April 15, 1955.

3. The deficiency as determined by the Commissioner is liability for individual income taxes for the taxable year ended December 31, 1951, in the amount of \$15,525.59. The amount in controversy is \$12,056.00.

4. The determination of taxes set forth in the said notice of deficiency is based upon the following error:

(a) The Commissioner erroneously and improperly included as a capital gain \$48,224.00, representing proceeds from the sale of 320 shares of stock.

5. The facts upon which petitioner relies as a basis of this proceeding are as follows:

(a) Prior to December 27, 1950, the petitioner transferred by written agreement 320 shares of stock of Gordon Oil Company, a California corporation, which petitioner had organized and promoted. The 320 shares of stock were transferred to Goran W. Raichart, who died on December 27, 1950. The consideration of said transfer to Goran W. Raichart was for services rendered to the petitioner in promoting the sale of Gordon Oil Com-

pany stock. At the time petitioner executed the agreement assigning said 320 shares to Goran W. Raichart, said stock and other shares owned by petitioner were in escrow, under orders of the Corporation Commissioner; and therefore, Goran W. Raichart did not get possession of the stock certificate before he died.

(b) Thereafter on January 24, 1951, petitioner sold all of his shares of Gordon Oil Company stock and the 320 shares previously transferred to Goran W. Raichart.

(c) Gordon Oil Company was dissolved in August 1951.

(d) Thereafter a dispute arose between the Estate of Raichart and petitioner over the rights of petitioner and the Estate of Raichart to the said 320 shares of stock. Following a hearing on its merits, the Superior Court of San Diego County, State of California, found that petitioner was a constructive trustee of said 320 shares of stock for the benefit of Raichart, and therefore the monies received for same, \$48,224.00, were received by petitioner for the account of the Estate of Raichart. Petitioner then paid said sum of \$48,224.00, plus interest, to the Estate of Raichart.

(e) The District Court of Appeals, State of California, affirmed the findings and decision of the Superior Court. 120 C.A. 2d. 645.

(f) The Commissioner has erroneously included as a part of petitioner's income the proceeds from the sale of the said 320 shares of stock in the amount of \$48,224.00.

Wherefore, the petitioner prays that this Court may hear the proceeding and determine that there is no deficiency due from petitioner for the year 1951; and for any other and further relief as in the opinion of the Court petitioner is entitled to under the law.

/s/ N. GORDON PHILLIPS.

/s/ SIDNEY R. REED,
Counsel for Petitioner.

Duly Verified.

EXHIBIT "A"

Form 1230 (App.)

U. S. TREASURY DEPARTMENT
Internal Revenue Service
Regional Commissioner
1250 Subway Terminal Building
417 South Hill Street
Los Angeles 13, California

April 15, 1955

In replying refer to Ap:LA:AA-DRR 90-D

Mr. N. Gordon Phillips and
Mrs. Laurretta M. Phillips, Husband and Wife
715 North Maple Drive
Beverly Hills, California

Dear Mr. and Mrs. Phillips:

You are advised that the determination of your income tax liability for the taxable year(s) ended December 31, 1951 discloses a deficiency or deficiencies of \$15,525.59, as shown in the statement attached.

In accordance with the provisions of existing internal revenue laws, notice is hereby given of the deficiency or deficiencies mentioned.

Within 90 days from the date of the mailing of this letter you may file a petition with The Tax Court of the United States, at its principal address, Washington 4, D. C., for a redetermination of the deficiency. In counting the 90 days you may not exclude any day unless the 90th day is a Saturday, Sunday, or legal holiday in the District of Columbia in which event that day is not counted as the 90th day. Otherwise Saturdays, Sundays, and legal holidays are to be counted in computing the 90-day period.

Should you not desire to file a petition, you are requested to execute the enclosed form and forward it to the Assistant Regional Commissioner, Appellate, Room 1250, 417 S. Hill St., Los Angeles 13, Calif. The signing and filing of this form will expedite the closing of your return(s) by permitting an early assessment of the deficiency or deficiencies, and will prevent the accumulation of interest, since the interest period terminates 30 days after receipt of the form, or on the date of assessment, or on the date of payment, whichever is the earlier.

Very truly yours,

T. COLEMAN ANDREWS,
Commissioner,

/s/ By G. L. DUCKER,
Associate Chief, Appellate
Division.

Enclosures: Statement, Form 1276 Agreement Form.

STATEMENT

Mr. N. Gordon Phillips and Mrs. Lauretta M. Phillips, Husband and Wife, 715 North Maple Drive, Beverly Hills, California.

Tax Liability for the Taxable Year
Ended December 31, 1951

INCOME TAX

Year	Deficiency
1951	\$15,525.59

In making this determination of your income tax liability careful consideration has been given to the report of examination dated October 27, 1954, to your protest dated December 14, 1954, and to the statements made at the conference held on February 16, 1955.

A copy of this letter and statement has been mailed to your representative, Mr. Sidney R. Reed, 608 South Hill Street, Los Angeles 14, California, in accordance with the authorization contained in the power of attorney executed by you.

ADJUSTMENTS TO NET INCOME

Taxable Year Ended December 31, 1951

Net income as disclosed by return	\$769,714.49
Unallowable deductions and additional income:	
(a) Net capital gain increased	31,051.19
Net income adjusted	<u>\$800,765.68</u>

EXPLANATION OF ADJUSTMENT

(a) In your return for the year 1951 you reported long-term capital gains of \$1,655,191.90 taxable to the extent of 50%, or \$827,595.95. It has been determined, pursuant to the provisions of section 117 of the Internal Revenue Code of 1939 that you realized long-term capital gains of \$1,724,799.59 taxable to the extent of 50%, or \$862,399.80. The following adjustments are being made to the net capital gain as reported:

Net gain from sale of capital assets	
shown on return	\$827,595.95
(1) Increase in net long-term	
capital gain	\$34,803.85
(2) Capital loss carry-over	(3,752.66)
	<u>31,051.19</u>
Net capital gain corrected	<u>\$862,399.80</u>

(1) The increase in long-term capital gain is due to a reduction in the basis of the stock sold, as shown below:

Nelson-Phillips Oil Co.

Cost reported	\$ 37,760.00	
As corrected	31,724.52	\$ 6,035.48

Gordon Oil Co.

Cost reported	\$112,100.00	
As corrected	48,527.79	63,572.21

Total decrease in cost basis	\$ 69,607.69
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Taxable at 50%	\$ 34,803.85
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(2) In the year 1950 you sustained a capital loss in the amount of \$4,752.66, which was limited to \$1,000.00. The balance of \$3,752.66 is allowable as a capital loss carry-over to the year 1951.

COMPUTATION OF TAX

Taxable Year Ended December 31, 1951

Net income	\$800,765.68
Less: Exemptions	2,400.00
Balance subject to tax	\$798,365.68
Joint return— $\frac{1}{2}$ of \$798,365.68	\$399,182.84
Tentative tax	\$338,552.38
Combined normal tax and surtax—multiply by 2	\$677,104.76
Alternative tax	\$429,323.57
Income tax liability	\$429,323.57
Liability disclosed by return, account No. 7-329004	413,797.98
Deficiency of income tax	\$ 15,525.59

COMPUTATION OF ALTERNATIVE TAX

Taxable Year Ended December 31, 1951

Net income	\$800,765.68
Less: Excess of net long-term capital gain over net short-term capital loss	862,399.80
Ordinary net income	\$ 0.00
Partial tax	\$ 0.00
Plus: 50% of gain	429,323.57
Alternative tax	\$429,323.57

Served June 22, 1955.

[Endorsed]: T.C.U.S. Filed June 21, 1955.

[Title of Tax Court and Docket No. 58561.]

ANSWER

The Commissioner of Internal Revenue, by his attorney, John Potts Barnes, Chief Counsel, Internal Revenue Service, for answer to the petition of the above-named taxpayer, admits and denies as follows:

1, 2, 3. Admits the allegations contained in paragraphs 1, 2, and 3 of the petition.

4. Denies the allegations of error contained in paragraph 4 of the petition and subparagraph (a) thereof.

5. (a)-(b). Denies the allegations contained in subparagraphs (a) and (b) of paragraph 5 of the petition.

(c) For lack of sufficient information, denies the allegations contained in subparagraph (c) of paragraph 5 of the petition.

(d) Denies the allegations contained in subparagraph (d) of paragraph 5 of the petition.

(e) Admits that the District Court of Appeals, State of California, affirmed the findings and decision of the Superior Court. 120 C.A. 2d. 645.

(f) Denies the allegations contained in subparagraph (f) of paragraph 5 of the petition.

6. Denies generally and specifically each and every allegation contained in the petition, not heretofore specifically admitted, qualified or denied.

Wherefore, it is prayed that this appeal be denied and that the respondent's determination be sustained.

/s/ JOHN POTTS BARNES, REM,
Chief Counsel, Internal Revenue
Service.

Of Counsel: Melvin L. Sears, Regional Counsel,
E. C. Crouter, Assistant Regional Counsel, R.
E. Maiden, Jr., Special Assistant to the Re-
gional Counsel, Mark Townsend, Attorney, In-
ternal Revenue Service.

[Endorsed]: T.C.U.S. Filed August 15, 1955.

[Title of Tax Court and Docket No. 58562.]

PETITION

The above-named petitioner hereby petitions for a redetermination of the deficiency set forth by the Commissioner of Internal Revenue in his notice of deficiency (Bureau symbols Ap:LA:AA-DRR 90-D) dated April 15, 1955, and as a basis for her proceeding alleges as follows:

1. The petitioner is an individual whose address is 715 North Maple Drive, Beverly Hills, California. The return for the period here involved was filed with the Collector of Internal Revenue for the Sixth District of California.

2. The notice of deficiency (a copy of which is attached and marked Exhibit A) was mailed to the petitioner on April 15, 1955.

3. The deficiency as determined by the Commissioner is liability for individual income taxes for the taxable year ended December 31, 1951, in the amount of \$15,525.59. The amount in controversy is \$12,056.00.

4. The determination of taxes set forth in the said notice of deficiency is based upon the following error:

(a) The Commissioner erroneously and improperly included as a capital gain \$48,224.00, representing proceeds from the sale of 320 shares of stock.

5. The facts upon which petitioner relies as a basis of this proceeding are as follows:

(a) The controversy between the petitioner and the Commissioner is caused by virtue of a joint income tax return filed for the taxable year ended December 31, 1951, by petitioner and her husband, N. Gordon Phillips. The subject of the controversy is a business transaction involving the proceeds from the sale of 320 shares of stock of Gordon Oil Company, which transaction was performed by petitioner's husband, N. Gordon Phillips.

(b) Prior to December 27, 1950, the petitioner's husband, N. Gordon Phillips, transferred by written agreement 320 shares of stock of Gordon Oil Company, a California corporation, which petitioner's husband had organized and promoted. The 320 shares of stock were transferred to Goran W. Raichart, who died on December 27, 1950. The

consideration of said transfer to Goran W. Raichart was for services rendered to the petitioner's husband in promoting the sale of Gordon Oil Company stock. At the time petitioner's husband executed the agreement assigning said 320 shares to Goran W. Raichart, said stock and other shares owned by petitioner's husband were in escrow, under orders of the Corporation Commissioner; and therefore, Goran W. Raichart did not get possession of the stock certificate before he died.

(c) Thereafter on January 24, 1951, petitioner's husband sold all of his shares of Gordon Oil Company stock and the 320 shares previously transferred to Goran W. Raichart.

(d) Gordon Oil Company was dissolved in August, 1951.

(e) Thereafter a dispute arose between the Estate of Raichart and petitioner's husband over the rights of petitioner's husband and the Estate of Raichart to the stock. Following a hearing on its merits, the Superior Court of San Diego County, State of California, found that petitioner's husband was a constructive trustee of said 320 shares of stock for the benefit of Raichart, and therefore the monies received for same, \$48,224.00, were received by petitioner's husband for the account of the Estate of Raichart. Petitioner's husband then paid said sum of \$48,224.00, plus interest, to the Estate of Raichart.

(f) The District Court of Appeals, State of Cali-

fornia, affirmed the findings and decision of the Superior Court. 120 C.A. 2d 645.

(g) The Commissioner has erroneously included as a part of petitioner's income the proceeds from the sale of the said 320 shares of stock in the amount of \$48,224.00.

Wherefore, the petitioner prays that this Court may hear the proceeding and determine that there is no deficiency due from petitioner for the year 1951; and for any other and further relief as in the opinion of the Court petitioner is entitled to under the law.

/s/ LAURETTA M. PHILLIPS,

/s/ SIDNEY R. REED,

Counsel for Petitioner.

[Exhibit A—Notice of Deficiency is the same as set out at pages 8-11 of this printed record.]

Duly Verified.

Served June 22, 1955.

[Endorsed]: T.C.U.S. Filed June 21, 1955.

[Title of Tax Court and Docket No. 58562.]

ANSWER

The Commissioner of Internal Revenue, by his attorney, John Potts Barnes, Chief Counsel, Internal Revenue Service, for answer to the petition of the above-named taxpayer, admits and denies as follows:

1, 2, 3. Admits the allegations contained in paragraphs 1, 2, and 3 of the petition.

4. Denies the allegations of error contained in paragraph 4 of the petition, and subparagraph (a) thereof.

5. (a) Admits that the controversy between the petitioner and the Commissioner is caused by virtue of a joint income tax return filed for the taxable year ended December 31, 1951, by petitioner and her husband, N. Gordon Phillips. Denies the remaining allegations contained in subparagraph (a) of paragraph 5 of the petition.

(b)-(c). Denies the allegations contained in subparagraphs (b) and (c) of paragraph 5 of the petition.

(d) For lack of sufficient information, denies the allegations contained in subparagraph (d) of paragraph 5 of the petition.

(e) Denies the allegations contained in subparagraph (e) of paragraph 5 of the petition.

(f) Admits that the District Court of Appeals, State of California, affirmed the findings and decision of the Superior Court. 120 C.A. 2d 645.

(g) Denies the allegations contained in subparagraph (g) of paragraph 5 of the petition.

6. Denies generally and specifically each and every allegation contained in the petition, not hereinbefore specifically admitted, qualified or denied.

Wherefore, it is prayed that this appeal be denied

and that the respondent's determination be sustained.

/s/ JOHN POTTS BARNES, REM,
Chief Counsel, Internal Revenue
Service.

Of Counsel: Melvin L. Sears, Regional Counsel,
E. C. Crouter, Assistant Regional Counsel, R.
E. Maiden, Jr., Special Assistant to the Re-
gional Counsel, Mark Townsend, Attorney, In-
ternal Revenue Service.

[Endorsed]: T.C.U.S. Filed August 15, 1955.

The Tax Court of the United States

Docket No. 58561

N. GORDON PHILLIPS, Petitioner,

v.

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

Docket No. 58562

LAURETTA M. PHILLIPS, Petitioner,

v.

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

STIPULATION OF FACTS

It is hereby stipulated (without limiting either party in the presentation of any other items of

proof, either related or unrelated to the matter herein referred to) as follows:

1. The petitioners are husband and wife residing in Beverly Hills, California. They filed a joint income tax return for the taxable year ended December 31, 1951 with the Collector of Internal Revenue at Los Angeles, California. Attached hereto and marked Joint Exhibit 1-A is a true copy of such return.

2. Petitioner Laurretta M. Phillips is interested in this case by virtue of the community property laws of California and her liability under the joint income tax return for 1951.

3. Petitioner N. Gordon Phillips, hereinafter called "Petitioner", organized and promoted the Gordon Oil Company, a California corporation, organized on January 30, 1949. For his services and for the transfer of certain leasehold interests, he was to receive one-half ($\frac{1}{2}$) of the stock of said company. A permit was issued by the Corporation Commissioner of the State of California in March, 1949, authorizing the issuance of 13,000 shares of stock to petitioner and the sale of an additional 13,000 shares at a par value of \$10, and providing that all shares should be held in escrow and that petitioner should receive no dividends on his shares until the purchasers of shares for cash had been reimbursed for the full purchase price.

4. In August, 1949, a written agreement was entered into between petitioner and one Raichart reading as follows:

“San Diego, California

August 18, 1949

“For promotional services rendered by G. W. Raichart I, N. Gordon Phillips, hereby agrees to give when received from escrow, or order of the Corporation Commissioner, and G. W. Raichart hereby agrees to accept as payment in full for his promotional services, a total of 320 shares of capital stock of the Gordon Oil Company when issued to N. Gordon Phillips as authorized under the terms of its permit, with the Corporation Department of the State of California and pursuant to all covenants, conditions and terms of said permit, governing all stock when issued to N. Gordon Phillips.”

“The undersigned hereby certifies that he further agrees to accept and be bound by all the provisions of the order of the Commissioner of Corporations of the State of California, contained in said permit when the stock is issued to

Signed: N. Gordon Phillips

Accepted: G. W. Raichart.”

5. Dr. Raichart died on December 27, 1950. Shortly thereafter, Phillips put through a transaction by which one Kline agreed to purchase all of the stock of the Gordon Oil Company. On March 21, 1951 the petitioner received 11,210 shares out of escrow and on or about the same date sold them to Kline for \$1,689,347.00. In August, 1951 said Gordon Oil Company was dissolved, thereby extinguishing all of its outstanding shares.

6. Petitioner received only 11,210 shares out of escrow because the Corporation Commissioner of California had consented to the following transfers of stock on March 18, 1949 within escrow from Phillips to:

L. Lek	200 shares
Chester B. Nelson	500 shares
Guy B. Davis	10 shares
Francis H. Gregory	540 shares
N. Stokes Rice	540 shares

1790

When the escrow closed, these shares were delivered directly to the named parties.

7. The executrix of the estate of Dr. Raichart brought an action for breach of contract against petitioner, with a second count for conversion, involving the right to 320 shares of corporate stock. In an adversary proceeding, the Superior Court in and for the State of California, County of San Diego, rendered a decision in favor of the plaintiff. Attached hereto and marked Joint Exhibit 2-B is a true copy of the "Findings of Fact and Conclusions of Law" and the "Judgment" of such court. The District Court of Appeals, Fourth District, California, affirmed the judgment of the Superior Court in a decision reported in 120 Cal. App. 2d 645, 261 P 2d 777. Appeal to the Supreme Court of California was denied.

8. Petitioner paid the judgment together with

interest, a total amount of \$56,755.73, in 1953. Attached hereto and marked Joint Exhibit 3-C is a true copy of petitioners' return for the year 1953.

/s/ SIDNEY R. REED,

Counsel for Petitioners.

/s/ NELSON P. ROSE, REM,

Chief Counsel, Internal Revenue Service, Counsel
for Respondent.

[Endorsed]: T.C.U.S. Filed June 4, 1957.

[Title of Tax Court and Docket No. 58561.]

TRANSCRIPT OF PROCEEDINGS

Courtroom of the United States Tax Court, Department 9, Federal Building, Los Angeles, California, Wednesday, June 5, 1957, 10:00 a.m.

The above-entitled matter came on for hearing, pursuant to notice, at 10 a.m.

Before: The Honorable John E. Mulroney.

Appearances: Sidney R. Reed, Room 512, 608 South Hill Street, Los Angeles, California, on behalf of the Petitioner. Mark Townsend, 1135 Subway Terminal Building, Los Angeles, California, on behalf of the Respondent. [1]*

Proceedings

The Clerk: Docket Number 58561, N. Gordon and Laurretta Phillips.

* Page numbers appearing at top of page of Reporter's Transcript of Record.

State your appearances, please.

Mr. Reed: Sidney R. Reed for the Petitioner.

Mr. Townsend: Mark Townsend for the Respondent.

The Court: Come forward on the Phillips case.

Mr. Reed: Does your Honor care for a statement of what our position is?

The Court: Yes, I'd like it, Mr. Reed. First, have you got a stipulation of any of the facts?

Mr. Reed: Yes, we have. They're substantially stipulated, your Honor. I will begin the stipulations with exhibits attached as Nos. 1-A and 2-B.

The Court: Stipulation with Exhibit 1-A and 2-B will be received.

Mr. Reed: There are two cases here, husband and wife cases, and I move that they be consolidated for the hearing.

The Court: The motion will be granted.

Mr. Reed: Your Honor, these cases involve a single issue. The question is whether or not the Petitioners are taxable on the sale of 320 shares of stock of the Gordon Oil Company, which the Courts of California have held he did not own at the time the purported sale took place. In 1949, the Petitioner owned an undivided one-third interest in two [3] mineral leases. He transferred that interest to a new company that he organized known as Gordon Oil Company.

In consideration of the assignment of the leases and the promotion of the company, he was paid 13,000 shares of stock of the Gordon Oil Company. However, the Corporation Commissioner required

the stock to be held in escrow until such time as other stockholders who had paid cash for their stock had received a full return of their purchase price in the form of dividends.

The escrow did not terminate until on or about March of 1951. During the time the stock was held in escrow, the Petitioner had some business dealings with one Richert, and in those dealings he delivered to Richert an agreement dated August 18, 1949. The contents of the agreement are in our stipulation of facts.

The agreement was executed by both the parties, and in it purported to transfer 320 shares of stock from the Petitioner to Richert subject, however, to the escrow terms.

Richert died in December of 1950. In January of 1951, the Petitioner, along with all the other stockholders of Gordon Oil Company, sold their stock to one Kline. The Petitioner had never made an actual delivery of the stock to Richert; during the interval when it was held in escrow with the approval of the Corporation Commissioner, certain of the stock had been transferred to other persons by petitioner, so that [4] when the escrow closed, Petitioner *still* 11,210 shares. Now, that figure included the 320 shares of stock that became the subject of litigation between the Estate of Richert and Petitioner.

Petitioner included in his 1951 Return the entire proceeds from the 11,210 shares of Gordon Oil Company stock.

The Estate of Richert brought a suit for breach

for contract and conversion, alleging that the 320 shares of stock rightfully belonged to Richert. The plaintiff prevailed in that action. It was a hotly contested action; the transcript was 585 pages of testimony. The Petitioner was represented by two eminent lawyers in that contest.

The District Court of Appeals affirmed the findings and conclusions of law of the trial court. A hearing was denied by the Supreme Court.

Thereafter, Petitioner paid a judgment of thirty-six thousand and some-odd dollars to the Estate of Richert in 1953. Now, in 1953, the Petitioner had no income. At no time had they ever received a benefit of that payment of that \$36,000.00. The 1951 return of Petitioner reduced the basis of the stock of the Gordon Oil Company stock, creating thereby a deficiency. The Petitioner did not contest that adjustment. However, the respondent refused to adjust his 1951 liability in accordance with the findings of the California courts, which held Petitioner was not the owner of that stock at the time it was [5] transferred to Richert.

Now, our position in this case is that it has been followed by this Court over a long period of time, namely, that in an adversary litigation proceeding over the division of property, that the Federal Courts and this Court are bound by the findings of fact and conclusions of law of the State Courts. We believe that our position is sound. It is not a case where there is any question about whether or not title passed between them in '49; that's been decided by the courts.

I'd like to introduce into evidence the——

Mr. Townsend: Pardon me, Mr. Reed, that's already in as Exhibit 2.

Mr. Reed: That's right. I forgot.

I'd like to quote from the decision of the trial court in the Richert case:

"It is true that on the 27th day of December, 1950, at the date of the death of said G. W. Richert, the said G. W. Richert was the owner of and entitled to the immediate possession of said 320 shares of common capital stock in the Gordon Oil Company, a California corporation, when released by the Corporation Commissioner in accordance with said escrow, that ever since the death of said G. W. Richert, the owner is entitled to immediate possession of said 320 shares of stock as of January 24, 1951." [6]

Now, your Honor, the reason that a money judgment was paid in this matter was because in August of 1951, the transferee, Kline, caused the Gordon Oil Company to be dissolved. Therefore, the stock was no longer in existence after that. Therefore, the trial court valued the stock at one hundred fifty-two per share, and awarded the plaintiff a judgment in this amount, plus a dividend that had been paid, plus interest on that sum to the date of payment.

I believe that's substantially—that substantially states Petitioner's position in this matter.

Mr. Townsend: Your Honor, I will not review the facts that Mr. Reed has already covered. The deficiency involved is approximately fifteen thou-

sand and some-odd dollars. Mr. Reed has pointed out that a suit was brought in the Superior Court. In that suit, the Petitioner herein took the position that there was never any intention to transfer that stock, that the agreement was a nullity, and the alternative agreement had been rescinded.

It is the Government's position that the Petitioner had a claim of the right to that stock, that he did not agree to turn over any specific 320 shares out of his 11,210, and that he had a right to convey, subject to a suit for breach of contract and conversion, and that since he had a claim of right, he sustained the taxable income on the sale of the stock and then he would be entitled to a deduction in 1953 when [7] he finally paid out the liability.

It's the Respondent's position that the case comes within the *North American Consolidated v. Burnett*, and also the recent *Redkin v. United States*.

I might point out that the stipulation of facts refers to three exhibits, the third exhibit is the 1953 income tax return which we have not as yet been able to secure, that we hope to have before the Court leaves, and we will duly submit it as the third exhibit.

The Court: What year?

Mr. Townsend: 1953.

Mr. Reed requested me to supply that, and I believe it's been his intention to show that benefit was secured by the tax year 1953. The year involved is 1951, your Honor, when the stock was sold.

The Court: Any dispute in fact, gentlemen? Sounds like it's just a legal proposition.

Mr. Townsend: It is primarily a legal proposition, your Honor.

I believe we do have an evidence that will come up as admissibility of certain evidence, and I believe Mr. Reed intends to call Mr. Phillips primarily for background material in the case, but I think that's primarily—I would also like permission, if I may, to withdraw 1-A, which is the income tax return for 1951, and substitute a photostatic [8] copy.

The Court: Yes, that will be done.

Mr. Townsend: Thank you, your Honor.

Mr. Reed: Mr. Phillips?

Whereupon,

N. GORDON PHILLIPS

was called as a witness on behalf of the Petitioners, and having been first duly sworn, testified as follows:

The Clerk: State your name and address for the record.

The Witness: N. Gordon Phillips, 715 North Maple Drive, Beverly Hills.

Direct Examination

Q. (By Mr. Reed): Mr. Phillips, you are the Petitioner in this case? A. Yes.

Q. And Mrs. Phillips is also a Petitioner?

A. That's right.

Q. I show you what purports to be the 1951 re-

(Testimony of N. Gordon Phillips.)

turn of N. Gordon and Laurretta Phillips, and ask you if that's your signature? A. Yes.

Q. This is your 1951 Federal Income Tax Return, is it? A. That's right.

Q. Is this the tax you paid on this return? What is [9] that amount? A. \$413,797.98.

Q. Calling your attention to the schedule attached to your return, entitled "Sale of Capital Assets," what number of Gordon Oil Company shares of stock did you sell?

A. 11,210 shares.

Q. Were those all the shares of stock you received out of escrow? A. Yes.

Q. I believe you were the defendant in the case of Richert vs. Phillips? A. Yes.

Q. What was the holding of that court in regard to 320 shares of the Gordon Oil Company stock?

Mr. Townsend: I believe the decision speaks for itself, and this witness is not involved——

The Court: Of course, the decision is. I presume it's a preliminary or something.

Mr. Reed: Yes, generally.

Q. (By Mr. Reed): Now, how many shares of stock were involved in the Court's ruling?

A. 310—320, pardon me.

Q. 320? A. Yes. [10]

Q. You paid a judgment in accordance with the Court's ruling? A. Yes.

Q. When? A. I forget the exact date.

Q. In 1953, did you have taxable income?

A. No.

(Testimony of N. Gordon Phillips.)

Q. In that year, did you or any—or any other year, get the benefit of any monies paid in accordance with the judgment? A. No.

Cross Examination

Q. (By Mr. Townsend): Mr. Phillips, directing your attention to your 1951 income tax return, Exhibit 1-A, specifically to the schedule showing the sale of capital assets, I notice thereon a heading, "Deposits by other Stockholders, Gordon Oil Company," thirty-two thousand and some-odd dollars, which you have included in your over-all capital gain; could you explain that item?

A. Now, you're talking about which one?

Mr. Reed: Your Honor, I object to that. I don't believe that's an issue before this Court.

The Court: Overruled.

He wants you to show him. [11]

Q. (By Mr. Townsend): This figure here (indicating).

A. Now, you want me to explain what that is, and——

Q. Yes, please.

A. Sorry, I'm afraid I can't answer that. I'd——

Mr. Townsend: If it's possible, we could read the stipulation on that, Mr. Reed.

I believe that amount represents the deposits from the stockholders on shares previously purchased from you to pay off the final amount that they owed you, from other stockholders rather than from Mr. Kline; you so stipulate?

(Testimony of N. Gordon Phillips.)

Mr. Reed: We will so stipulate, yes, sir.

Mr. Townsend: The question was solely for clarification, your Honor.

Q. (By Mr. Townsend): Now, Mr. Phillips, who was your attorney in the state court action?

A. It was Ellison.

Q. Eugene Ellison? A. That's right.

Q. Now, in that state court action, what did you testify with respect to that agreement?

Mr. Reed: I object to what he testified to. Surely there is no materiality in this case; it's a different issue, different parties, and the record of that case is not admissible [12] in this proceeding for any purpose.

The Court: The testimony of conditions under which he claimed it will probably be of interest.

Mr. Reed: He has already answered that question that he did consider it his own stock. The question has been asked and answered.

The Court: I think if he's already testified that he did hold it, he has a claim of right. I didn't know that he had said it quite that plainly.

You might ask him that first, and that will eliminate any testimony.

Q. (By Mr. Townsend): Did you so testify, Mr. Phillips, that——

The Court: No, not that he testified. I mean, how did he hold the stock.

Q. (By Mr. Townsend): Did you hold your stock as your own under a claim at that time?

A. Yes, I did.

(Testimony of N. Gordon Phillips.)

Mr. Reed: Your Honor, I ask that the witness, to come to a conclusion——

The Court: It won't be received as any binding conclusion of the legal proposition of claim of right because I'm sure Mr. Phillips doesn't know that rule of law, just how he claimed ownership at that time. [13]

Mr. Reed: I believe the record should show the Petitioner objected.

Mr. Townsend: I have no further questions.

Mr. Reed: That's all.

If your Honor please, I believe this is one case we can get a decision on now. I believe this case is strictly parallel with the Stein case, and follows a long established rule of this Court that in adversary proceedings in a state court over division of property, or the ownership of the property, that the Commissioner is bound.

Mr. Townsend: Your Honor, I haven't rested my case yet.

Mr. Reed: I'm sorry; excuse me.

Mr. Townsend: There's one point in—one piece of evidence I would like to offer, your Honor.

I asked Mr. Reed to bring down the pleadings that were filed in the Superior Court case of Mr. Phillips. He was unable to bring them in. He assures me we will have them, and can get them in a short time.

My point on introducing the answer filed by the defendant in that case is again his position in that

case as contrary to his position in this case, and I believe it is admissible as an admission and further to show the Government's theory on the case on the claim of right, and Mr. Reed assured me he can get it for me, and I would like to offer that, or at [14] least to secure a ruling from the Court on admissibility of that evidence.

Mr. Reed: If your Honor please, Petitioner would strongly object to the admission of that evidence. It's been ruled on by this Court that the proceedings of a prior case are not admissible as evidence. Here again I must mention that the parties are different and the issue is different.

Naturally, in a complaint and answer, a lot of legalistic language is used, he did or didn't and so forth, and I don't think it proper evidence in this case; I think here we have a very simple question.

In a hotly litigated case, the California courts held that this man did not own the stock, and therefore he, under California law, took it as an involuntary trust deed for the benefit of Richert.

The Court: I think it would be perfectly admissible, Mr. Reed.

We are admitting a judgment in this case, and the pleadings, I think, would also be admissible, and as soon as they are received, I will entertain a motion to admit them, and you can make the objection, but certainly I think they would be admissible.

Is there any more of the record than just that?

Mr. Townsend: Well, I was also going to offer the plaintiff's complaint in the case, your Honor,

to show the [15] type of action that was brought by the plaintiff.

The Court: That's what I mean, the complaint and the answer?

Mr. Townsend: The entire pleadings, yes, sir.

The Court: Perfectly admissible.

It isn't a question of *res adjudicata*, or anything like that as far as the parties are concerned, like we frequently—frequently the parties have to be the same in order to have pleadings of the state court admitted, but here, this action turns on the claim that the Petitioner made, during the year involved, the sale.

Mr. Reed: If your Honor please, in that litigation is a question of who owned that stock on the date of this transfer to Kline. In this, if your Honor please, the Petitioner in this action did not own that stock on the date it was transferred, the court being bound by it. It would appear to me that the record in the prior case would have no bearing.

The Court: All that is going to go to the legal proposition of whether or not he must take this loss in the year in which he pays back. I don't know the answer to that; I have one or two opinions on that involving the claim of right; I have to take the matter under consideration, but as far as the evidence is concerned of the pleadings, and the judgment entered in that case, I certainly think it perfectly admissible.

Mr. Reed: I can have them here. I will take a

cab [16] down to my office, and I can have them in 30 or 40 minutes.

The Court: Is there more?

Mr. Townsend: That's all, your Honor.

The Court: Then, subject to the introduction of those pleadings, you rest?

Mr. Townsend: Yes, your Honor.

Mr. Reed: Petitioner rests.

The Court: Do I understand you didn't want to file any briefs?

Mr. Reed: If your Honor please, I feel that the authorities are so complete on the problem here, that the Court might well decide this case at this time without the necessity of filing briefs.

The Court: The statute provides we must write an opinion on all these cases, anyway, and I would rather take the case under advisement. If you would care to file some short memorandum brief of your authorities, it might be helpful to the Court.

Mr. Reed: At this time?

The Court: Well, you have, under the rules, 45 days in which to file, and then 30 days after in which to file an answer.

Mr. Reed: Will these be simultaneous briefs?

The Court: I think so. They can be either. I like simultaneous briefs. [17]

Well, then, subject to the introduction of the pleadings, and any objection counsel might make, do you want to make any objection now on the record?

Mr. Reed: Yes, if your Honor please, I object

to the admission of those pleadings as not being proper evidence in this proceeding; they are not admissible for any purpose.

The Court: Objection will be overruled.

The pleadings, when they come here, will be marked Exhibits C and D; that will be the complaint and the answer.

Mr. Townsend: It will be D and E. We will have one that will be—we have one further exhibit that will be attached.

The Court: It will be attached to this 3-C, will be attached to the stipulation. Then these will be D and E.

The exhibit will be admitted and caused as submitted. Counsel may file briefs, simultaneous briefs, in 45 days, and file briefs 30 days thereafter if they wish.

The Clerk: The dates are July 22nd and August 21st; August 21st for the reply briefs.

(Whereupon, at 10:50 o'clock a.m., the hearing was closed.) [18]

[Endorsed]: T.C.U.S. Filed July 1, 1957.

29 T. C. No. 7

Tax Court of the United States

N. Gordon Phillips, Petitioner, v. Commissioner of Internal Revenue, Respondent.

Lauretta M. Phillips, Petitioner, v. Commissioner of Internal Revenue, Respondent.

Docket Nos. 58561, 58562. Filed October 16, 1957.

Held, petitioner received all of the proceeds from the 1951 sale of stock under a claim of right so as to be taxable thereon in that year, despite the fact he was obliged in a later year to pay back the proceeds received from the sale of a portion of the stock, pursuant to the mandate of a state court decree.

Sidney R. Reed, Esq., for the petitioners.

Mark Townsend, Esq., for the respondent.

OPINION

Mulroney, Judge: The respondent determined a deficiency in the income tax of the petitioners in these consolidated cases for the calendar year 1951 in the amount of \$15,525.59. The sole issue in controversy here is whether the proceeds from the sale of certain stock, reported as income in the 1951 joint return of petitioners, can be included in that year's income when it appeared petitioners were obliged to pay back such proceeds to a claimant in a later year.

Most all of the facts were stipulated and the stip-

ulated facts are found accordingly. N. Gordon Phillips and Laurretta M. Phillips, petitioners in these consolidated cases, are husband and wife residing in Beverly Hills, California. They filed a joint income tax return for 1951 with the then collector of internal revenue for the sixth district of California at Los Angeles, California. Petitioner, N. Gordon Phillips, will hereafter sometimes be referred to as petitioner, as Laurretta is only interested in the case by virtue of the community property laws of California and her liability under the joint income tax return for 1951.

Petitioner organized and promoted the Gordon Oil Company, a California corporation organized on January 30, 1949. For his services and for the transfer of certain leasehold interests, he was to receive one-half of the stock of the said company. A permit was issued by the Corporation Commissioner for the State of California in March 1949, authorizing the issuance of 13,000 shares of stock to petitioner and the sale of an additional 13,000 shares at a par value of \$10, and providing that all shares should be held in escrow and that petitioner should receive no dividends on his shares until the purchasers of shares for cash had been reimbursed for the full purchase price.

Petitioner sold 1,790 shares of stock to other parties, and in March of 1949 the Corporation Commissioner consented to the transfer of said 1,790 shares within escrow to the names of such purchasers. In August 1949 a written instrument was

executed by petitioner and G. W. Raichart under the terms of which petitioner purportedly agreed to give "For promotional services rendered", when received by petitioner from escrow, 320 shares of the capital stock of the Gordon Oil Company.

G. W. Raichart died on December 27, 1950, and shortly thereafter petitioner put through a transaction with a man named Kline wherein the latter agreed to purchase all of the stock of the Gordon Oil Company. On March 21, 1951, petitioner received 11,210 shares out of escrow (13,000 shares less 1,790 shares previously transferred) and on or about the same date sold them to Kline for \$1,689,-347. In August 1951 the Gordon Oil Company was dissolved, thereby extinguishing all of its outstanding shares.

Petitioner treated all of the shares of stock and the proceeds received from the sale of stock as his own, reporting the gain from the sale on his 1951 income tax return.

In February 1952 the widow of G. W. Raichart, as executrix of his will, brought an action in the Superior Court of California against petitioner for breach of contract and for conversion with respect to the 320 shares of stock which was the subject of the aforementioned instrument executed by petitioner and Raichart. Petitioner resisted the claim, asserting that the instrument executed by him and Raichart was never intended to be an agreement and was void; that it was executed without consideration; and in the alternative that the written

agreement had been canceled and extinguished by an oral agreement between the parties. In December 1952 the Superior Court rendered a decision and judgment in favor of the plaintiff holding the defendant in that action, petitioner here, was guilty of conversion of 320 shares of the Gordon Oil Company stock. Since the stock had been disposed of a money judgment was awarded the plaintiff in that action. The District Court of Appeals, Fourth District of California, affirmed the judgment and an appeal to the Supreme Court of California was denied. Petitioner paid the judgment, together with interest, in the amount of \$56,755.73 in 1953.

In his 1953 return Phillips did not claim a deduction for the payment of the judgment. In 1953 his operations, without regard to the payment of the judgment, resulted in a loss and he had no taxable net income for that year.

The deficiencies set forth in the statutory notices are due to the reduction in the basis of the 11,210 shares of Gordon Oil Company stock sold and reported by petitioner. Petitioner does not contest this reduction in basis but contends that he is entitled to reduce the sales proceeds reported in his 1951 return by the amount of money received for the 320 shares of stock, which money he was obliged to refund in 1953, pursuant to the judgment of the California Courts.

Respondent contends that the proceeds were received by petitioner under a claim of right without restriction as to their disposition, and they are tax-

able to petitioner in 1951, the year they were received and retained even though in a later year, in 1953, the petitioner was obliged to refund them.

We agree with the respondent that the portion of the proceeds received from the sale of the 320 shares in 1951 was taxable income to the petitioner for that year even though he was later obliged to return the portion of the proceeds received from such sale. The "claim of right" doctrine, which supports respondent, had its origin in *North American Oil Consolidated v. Burnet*, 286 U.S. 417. The opinion explains the doctrine as follows:

If a taxpayer received earnings under a claim of right and without restriction as to its disposition, he has received income which he is required to return, even though it may still be claimed that he is not entitled to retain the money, and even though he may still be adjudged liable to restore its equivalent. * * *

There is no need to go into a general discussion of the claim of right doctrine. It has been applied many times. See *Healy v. Commissioner*, 345 U.S. 278; *Rutkin v. United States*, 343 U.S. 130; and *Michael Phillips*, 25 T.C. 767, *aff'd*. 238 F. 2d 473.

The facts of this case bring it clearly within the claim of right doctrine. Petitioner treated all 11,210 shares of stock which he received from escrow as his own and he sold the stock in 1951 and treated the entire proceeds from such sale as his own. It was not until 1952 that a claim was filed against the

portion of these proceeds representing the 320 shares claimed by Raichart's estate. Petitioner continued to claim his right to the proceeds from the sale of these 320 shares of stock. In what petitioner terms a "hotly contested adversary proceeding" it was ultimately decided that petitioner's claim of right was invalid.

Since petitioner retained the proceeds from the sale of the 320 shares of stock under claim of right without restriction as to the disposition of said proceeds, he is taxable in the year of sale, regardless of any infirmity in his title and despite the fact that he was obliged to refund the proceeds of said sale in 1953.

Petitioner argues that judgments of state courts in matters of title to property must be respected and here the California State Court ruled the 320 shares belonged to Raichart's estate and no income tax can be exacted from petitioner on the proceeds of the sale of that stock. But petitioner realized income from the sale of this stock in 1951, which he claimed as his own and which he retained at the close of the year. The force of the California judgment compelling the pay-back is recognized and petitioner's complying with the mandate of the judgment will give him a deduction from income in the year it is made.

Petitioner's real argument is in effect an equitable appeal. Petitioner's operations were such that in 1953 when he paid the \$56,755.73, he had no taxable income, and, he argues, unless he prevails

here, he will be without remedy and respondent will be exacting a tax on income which he reported but was not allowed to retain. But a cardinal principle of Federal income taxation requires annual returns and accounting. *Burnet v. Sanford & Brooks Co.*, 282 U.S. 359. This principle requires the determination of income at the close of the taxable year without regard to the effect of subsequent events. One can admit the equities of the situation favor petitioner but this Court must decide the case according to the applicable law for the taxable year.¹

Decisions will be entered for the respondent.

Served and Entered October 16, 1957.

¹ It is to be observed that Congress granted some relief in this area by providing, in section 1341 of the 1954 Code, that where a taxpayer is required to restore an amount, in excess of \$3,000, which was included in his income in a prior year under a claim of right, he may either (1) claim a deduction in the current year for the amount so restored, or (2) eliminate the amount so restored from the income of the prior year and decrease his current year's tax by the resulting decrease in tax for the prior year, with special rights for credits and refunds in certain situations.

The Tax Court of the United States
Washington

Docket No. 58561

N. GORDON PHILLIPS, Petitioner,

vs.

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

DECISION

Pursuant to the determination of the Court, as set forth in its Opinion, filed October 16, 1957, it is

Ordered and Decided: That there is a deficiency in income tax for the calendar year 1951 in the amount of \$15,525.59.

Entered Oct. 16, 1957.

[Seal] /s/ JOHN E. MULRONEY,
Judge.

Served and Entered Oct. 18, 1957.

The Tax Court of the United States
Washington

Docket No. 58562

LAURETTA M. PHILLIPS, Petitioner,

vs.

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

DECISION

Pursuant to the determination of the Court, as set forth in its Opinion, filed October 16, 1957, it is

Ordered and Decided: That there is a deficiency in income tax for the calendar year 1951 in the amount of \$15,525.59.

Entered Oct. 16, 1957.

[Seal] /s/ JOHN E. MULRONEY,
Judge.

Served and Entered Oct. 18, 1957.

[Title of Tax Court and Docket Nos. 58561-2.]

PETITION FOR REVIEW OF DECISION
OF TAX COURT

Come now petitioners N. Gordon Phillips and Lauretta M. Phillips, his wife, and respectfully petition for a review by the United States Court of Appeals for the Ninth Circuit of the decision of the Tax Court rendered in the above entitled matter, the two cases being consolidated for hearing, and respectfully allege:

I.

The above entitled proceeding involves the petitioners' income tax for the year 1951.

The controversy relates to the question of the amount of capital gain realized by petitioners on the sale of certain oil stock in 1951. Petitioners reported the gain realized from the sale of 11,210 shares of said stock. In an adversary proceeding, the Superior Court in and for the State of California, County of San Diego, held in 1952 that 320 of said shares had at all times been owned by a third party. The District Court of Appeals, Fourth

District, California, affirmed the judgment. Appeal to the Supreme Court of California was denied. Petitioners paid a money judgment in 1953 but received no tax benefit therefrom.

It was the decision of the Tax Court herein that the entire proceeds from the 1951 sale of stock were held by petitioners under a claim of right and that they were taxable on the entire gain despite the fact they were obligated in 1953 to pay the proceeds received from the sale of 320 of said shares to a third party pursuant to the decision of the California court.

It is the contention of petitioners that the California court having determined that said 320 shares of stock were never owned by them they cannot legally be taxed on the gain derived from the sale of said shares.

II.

The review is sought before the United States Court of Appeals for the Ninth Circuit.

III.

The petitioners at all times herein mentioned have resided and now reside in the County of Los Angeles, State of California; that their joint income tax return for the year involved was filed with the District Director of Internal Revenue, Los Angeles, California.

That the place where petitioners reside, and the place where the office of said District Director of Internal Revenue is located is within the Circuit of the United States Court of Appeals for the Ninth

Circuit, and said Court is the Court having jurisdiction of a review of the decision of the Tax Court herein under the provisions of Section 7482 of the Internal Revenue Code.

That the decision of the Tax Court was entered herein October 16, 1957; and a Motion for Review By Full Court was denied November 1, 1957; that the time for filing a Petition for Review will expire February 1, 1958.

Wherefore, your petitioners pray that a review be had of the decision of the Tax Court rendered in the above entitled matter, and that upon such review said decision be reversed.

Respectfully submitted,

/s/ A. L. BURFORD, JR.,
Attorney for Petitioners
on Review.

Affidavit of Service by Mail and Notice of Filing Attached.

[Endorsed]: T.C.U.S. Filed January 9, 1958.

[Title of Tax Court and Docket Nos. 58561-2.]

CERTIFICATE

I, Howard P. Locke, Clerk of the Tax Court of the United States, do hereby certify that the foregoing documents, 1 to 17, inclusive, constitute and are all of the original papers on file in my office as called for by the "Designation of Contents of Record on Review" and "Supplemental Designation of

Contents of Record on Review'', including Exhibits 1-A thru 3-C, attached to the Stipulation of Facts, and Respondent's Exhibits D and E, admitted in evidence, in the cases before the Tax Court of the United States docketed at the above numbers and in which the petitioners in the Tax Court have filed a petition for Review as above numbered and entitled, together with a true copy of the docket entries in said Tax Court cases as the same appear in the official docket in my office.

In testimony whereof, I hereunto set my hand and affix the seal of the Tax Court of the United States, at Washington, in the District of Columbia, this 3rd day of February, 1958.

[Seal] /s/ HOWARD P. LOCKE,
Clerk, Tax Court of the
United States.

[Endorsed]: No. 15890. United States Court of Appeals for the Ninth Circuit. N. Gordon Phillips and Laurretta M. Phillips, Petitioners, vs. Commissioner of Internal Revenue, Respondent. Transcript of the Record. Petition to Review a Decision of The Tax Court of the United States.

Filed: February 11, 1958.

Docketed: February 18, 1958.

/s/ PAUL P. O'BRIEN,
Clerk of the United States Court of Appeals for
the Ninth Circuit.

In the United States Court of Appeals
for the Ninth Circuit

Case No. 15890

N. GORDON PHILLIPS and LAURETTA M.
PHILLIPS, Appellants,

vs.

COMMISSIONER OF INTERNAL REVENUE,
Appellee.

STATEMENT OF POINTS ON WHICH
APPELLANTS WILL RELY

1. The Tax Court of the United States erred in holding that the proceeds received from the sale of 320 shares of stock, which in fact were the property of a third person, constituted taxable income to appellants when received by them in 1951.

2. The Tax Court of the United States erred in holding that the facts bring appellants' case clearly within the "claim of right doctrine".

3. The Tax Court of the United States erred in finding that appellants held the proceeds from the sale of said 320 shares of stock, which were in fact the property of a third person, without restriction as to the disposition of said proceeds.

4. The Tax Court of the United States erred in holding that there is a deficiency in appellants' federal income taxes for the year 1951 in the amount of \$15,525.59.

/s/ A. L. BURFORD, JR.,

Attorney for Appellants.

[Endorsed]: Filed March 28, 1958. Paul P.
O'Brien, Clerk.

[Title of Court of Appeals and Cause.]

DESIGNATION OF RECORD BY
APPELLANTS

Pursuant to Rule 17(6) of this Court, appellants hereby designate the following for inclusion in the printed record.

(1) Docket entries of all proceedings before the Tax Court of the United States.

(2) Pleadings before the Tax Court of the United States as follows:

(a) Petitions

(b) Answers

(3) Stipulation of Facts with Exhibits 1-A through 3-C attached.

(4) Respondent's Exhibits D and E admitted in evidence.

(5) Transcript of Trial.

(6) Opinion.

(7) Decision (Docket No. 58561).

(8) Decision (Docket No. 58562).

(9) Petition for Review.

(10) Designation of Contents of Record on Review.

(11) Supplemental Designation of Contents of Record on Review.

/s/ A. L. BURFORD, JR.,
Attorney for Appellants.

[Endorsed]: Filed March 28, 1958. Paul P. O'Brien, Clerk.